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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,929	09/17/2004	Hiroshi Kawasaki	2004_1479A	6783

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WASHINGTON, DC 20006-1021

EXAMINER

SULLIVAN, DANIELLE D

ART UNIT	PAPER NUMBER
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1609

MAIL DATE	DELIVERY MODE
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08/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,929

Applicant(s)

KAWASAKI ET AL.

Examiner

Danielle Sullivan

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1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 6-8 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 3-5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/07/07.

Claim Objections

Claim 7 objected to because of the following informalities: 'ares' is incorrect and should be spelled 'acres'. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimura et al. (EP 1101760) in view of Auler et al. (WO 00/03592).

Applicant's Invention

Applicant claims an herbicidal composition comprising 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide and 4-(2-chlorophenyl) -N-cyclohexyl-N-ethyl-4,5-dihydro-5-oxo-1H-tetrazole-1-carboxamide for use on a paddy field.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

With respect to claims 1,2 and 6-8 of the instant application, Yoshimura et al. teaches 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide as a di-fluoromethanesulfonyl anilide derivative of formula (I) (page 2, section [0008], lines 40-60 thru page 4, line 1). Yoshimura et al. discloses a method of making 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide (Example 2) (page 11, section [0057], lines 20-28). Yoshimura et al. discloses a method of using 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide on paddy rice (page 12, section [0061], lines 30-37; page 13, Table 1, lines 10-20). Yoshimura et al. discloses a method of making a composition with 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide in mixture as a water dispersible powder (page 17, section [0077], lines 50-53).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Yoshimura et al. does not teach the use of the combination of 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl]-6-methoxymethyl-N-difluoromethanesulfonylanilide with 4-(2-chlorophenyl)-N-cyclohexyl-N-ethyl-4,5-dihydro-5-oxo-1H-tetrazole-1-carboxamide nor the limitations of claims 7 or 8.

Auler et al. teaches herbicidal compositions containing one or more herbicidal active ingredients from the group of substituted phenoxy-sulfonylureas and one or more

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herbicidally active compounds such as fentrazamide (IUPAC/CAS: 4-(2-chlorophenyl) – N-cyclohexyl-N-ethyl-4,5-dihydro-5-oxo-1H-tetrazole-1-carboxamide), used in rice crops to combat undesirable harmful plants (abstract).

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Yoshimura et al. and Auler et al. to make a composition containing a 2-[(4,6-dimethoxypyrimidin-2-yl)hydroxymethyl] -6-methoxymethyl-N-difluoromethanesulfonylanilide and fentrazamide, since the two components are known in the art to both be used as herbicides. One would have been motivated to include the fentrazamide of Auler et al. because combinations of herbicides are known to reduce herbicidal injury by decreasing the factor of resistance. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Yoshimura et al. and Auler et al. to further include a method of sprinkling the composition over a paddy field, since Yoshimura et al. clearly teaches use in a paddy field and since Auler et al. also uses his herbicide in rice crops (paddy field). One would have been motivated to include the herbicide composition in the form of a water dispersible powder because this would allow for the composition to be diluted in solution to desired concentration and allow for easily application as a spray or as a liquid agent that could be sprayed. It is routine optimization for one of ordinary skill in the art to adjust ingredients in a composition to optimize the desired results of the

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composition. In this case, the range of concentration, 10 ppm to 100,000 ppm as well as the range of application, 0.1 g to 5 kg per 10 acres are routine optimization.

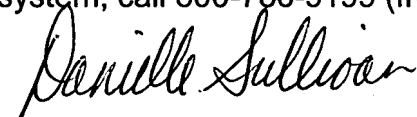
Claims 1, 3 and 6-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Yoshimura et al. in view of Euler et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Stucker can be reached on (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Danielle Sullivan
Patent Examiner


MICHAEL MELLER
PRIMARY EXAMINER